United Nations S/PV.5158

Security Council

Sixtieth year

Provisional

5158th meeting

Thursday, 31 March 2005, 10.30 p.m.

New York

President:	Mr. Sardenberg	(Brazil)
Members:	Algeria	Mr. Baali
	Argentina	Mr. Mayoral
	Benin	Mr. Adechi
	China	Mr. Wang Guangya
	Denmark	Ms. Løj
	France	Mr. De La Sablière
	Greece	Mr. Vassilakis
	Japan	Mr. Oshima
	Philippines	Mr. Baja
	Romania	Mr. Motoc
	Russian Federation	Mr. Denisov
	United Kingdom of Great Britain and Northern Ireland	Sir Emyr Jones Parry
	United Republic of Tanzania	Mr. Mahiga
	United States of America	Mrs. Patterson

Agenda

Reports of the Secretary-General on the Sudan

Letter dated 31 January 2005 from the Secretary-General addressed to the President of the Security Council (S/2005/60)

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. The final text will be printed in the *Official Records of the Security Council*. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room C-154A.

05-29247 (E)

The meeting was called to order at 10.35 p.m.

Adoption of the agenda

The agenda was adopted.

Reports of the Secretary-General on the Sudan

Letter dated 31 January 2005 from the Secretary-General addressed to the President of the Security Council (S/2005/60)

The President: I should like to inform the Council that I have received a letter from the representative of the Sudan, in which he requests to be invited to participate in the consideration of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite that representative to participate in the discussion without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

At the invitation of the President, Mr. Erwa (Sudan) took a seat at the Council table.

The President: The Security Council will now resume its consideration of the item on its agenda.

I welcome the presence of the Secretary-General, Mr. Kofi Annan, at this meeting.

Members of the Council have before them document S/2005/60, containing a letter dated 31 January 2005 from the Secretary-General, transmitting the report of the International Commission of Inquiry on Darfur.

Members of the Council also have before them document S/2005/218, which contains the text of a draft resolution submitted by the United Kingdom of Great Britain and Northern Ireland.

It is my understanding that the Council is ready to proceed to the vote on the draft resolution before it. If I hear no objection, I shall now put the draft resolution to the vote.

There being no objection, it is so decided.

A vote was taken by show of hands.

In favour:

Argentina, Benin, Denmark, France, Greece, Japan, Philippines, Romania, Russian Federation, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania

Against:

None

Abstaining:

Algeria, Brazil, China, United States of America

The President: The result of the voting is as follows: 11 votes in favour, none against and 4 abstentions. The draft resolution has been adopted as resolution 1593 (2005).

I shall now give the floor to those members of the Council who wish to make statements following the voting.

Mrs. Patterson (United States of America): Allow me to thank you, Sir, and your delegation for your endeavours during your presidency of the Council this month.

The adoption this month of two resolutions on the Sudan — peacekeeping and sanctions — demonstrates the Council's strong commitment to fostering peace and stability throughout the Sudan. The Council has succeeded in keeping the momentum moving forward on international support for peace in the Sudan. The 10,000-strong peacekeeping force authorized by the Council will assist the parties to the Comprehensive Peace Agreement in implementing that historic peace accord.

The sanctions resolution recognizes that conflict, violence and atrocities in Darfur continue and that the Council must take steps now to pressure the parties to end the violence in Darfur and to conclude a political settlement peacefully. We strongly urge the parties to the conflict in Darfur to cease the violence and atrocities and to resume political negotiations immediately in order to reach a political settlement peacefully.

As we all know, the contributions of the African Union have been and remain integral to the peaceful resolution of the conflict in Darfur. We commend the African Union and its leadership for their continued mission in Darfur. We continue to encourage the African mission in the Sudan to quickly ramp up its authorized force level to enable it to expand its areas of

patrol. We continue to strongly support the African Union's efforts to resolve the conflict in Darfur and urge all Member States to contribute to the mission.

We strongly support bringing to justice those responsible for the crimes and atrocities that have occurred in Darfur and ending the climate of impunity there. Violators of international humanitarian law and human rights law must be held accountable. In September, we concluded that genocide had occurred in Darfur and we called for and supported the creation of the International Commission of Inquiry. United Nations estimates are that 180,000 people have died from violence, atrocities and the hunger and disease caused by the conflict. Justice must be served in Darfur.

By adopting this resolution, the international community has established an accountability mechanism for the perpetrators of crimes and atrocities in Darfur. The resolution will refer the situation in Darfur to the International Criminal Court (ICC) for investigation and prosecution. While the United States believes that the better mechanism would have been a hybrid tribunal in Africa, it is important that the international community speak with one voice in order to help promote effective accountability.

The United States continues to fundamentally object to the view that the ICC should be able to exercise jurisdiction over the nationals, including government officials, of States not party to the Rome Statute. That strikes at the essence of the nature of sovereignty. Because of our concerns, we do not agree to a Security Council referral of the situation in Darfur to the ICC and abstained in the voting on today's resolution. We decided not to oppose the resolution because of the need for the international community to work together in order to end the climate of impunity in the Sudan and because the resolution provides protection from investigation or prosecution for United States nationals and members of the armed forces of non-State parties.

The United States is and will continue to be an important contributor to the peacekeeping and related humanitarian efforts in the Sudan. The language providing protection for the United States and other contributing States is precedent-setting, as it clearly acknowledges the concerns of States not party to the Rome Statute and recognizes that persons from those States should not be vulnerable to investigation or prosecution by the ICC, absent consent by those States or a referral by the Security Council. We believe that, in the future, absent consent of the State involved, any investigations or prosecutions of nationals of non-party States should come only pursuant to a decision by the Security Council.

Consistent with our long-standing views about the appropriate role of the Security Council, we expect that, by having the Security Council refer the situation in Darfur to the ICC, firm political oversight of the process will be exercised. The Council's action today plays an important role in that regard. We expect that the Council will continue to exercise such oversight as investigations and prosecutions pursuant to the referral proceed.

Protection from the jurisdiction of the Court should not be viewed as unusual. Indeed, under article 124, even parties to the Rome Statute can opt out from the Court's jurisdiction over war crimes for a period of seven full years, and important supporters of the Court have in fact availed themselves of that opportunity to protect their own personnel. If it is appropriate to afford such protection from the jurisdiction of the Court to States that have agreed to the Rome Statute, it cannot be inappropriate to afford protection to those that have never agreed. It is our view that non-party States should be able to opt out of the Court's jurisdiction, as parties to the Statute can, and the Council should be prepared to take action to that effect as appropriate situations arise in the future.

Although we abstained on this Security Council referral to the ICC, we have not dropped, and indeed continue to maintain, our long-standing and firm objections and concerns regarding the ICC. We believe that the Rome Statute is flawed and does not have sufficient protections from the possibility of politicized prosecutions. We reiterate our fundamental objection to the Rome Statute's assertions that the ICC has jurisdiction over the nationals, including government officials, of States that have not become parties to the Rome Statute. Non-parties have no obligations in connection with that treaty unless otherwise decided by the Security Council, upon which Members of this Organization have conferred primary responsibility for the maintenance of international peace and security.

We are pleased that the resolution recognizes that none of the expenses incurred in connection with the referral will be borne by the United Nations and that,

instead, such costs will be borne by the parties to the Rome Statute and those that contribute voluntarily. That principle is extremely important and we want to be perfectly clear that any effort to retrench on that principle by this or other organizations to which we contribute could result in our withholding funding or taking other action in response. That is a situation that we must avoid.

As is well known, in connection with our concerns about the jurisdiction of the Court and the potential for politicized prosecutions, we have concluded agreements with 99 countries — over half the States Members of this Organization — since the entry into force of the Rome Statute to protect against the possibility of transfer or surrender of United States persons to the Court. We appreciate that the resolution takes note of the existence of those agreements and will continue to pursue additional such agreements with other countries as we move forward.

Recognizing that non-parties have no obligation under the Rome Statute, the resolution recognizes and accepts that the ability of some States to cooperate with the ICC investigation will be restricted in connection with applicable domestic law. For the United States, we are restricted by United States statutes that reflect deep concerns about the Court from providing assistance and support to the ICC.

In the Darfur case, the Council included, at our request, a provision that exempts persons of non-party States in the Sudan from ICC prosecution. We respect the position of those countries that are parties to the Rome Statute of the International Criminal Court, but persons from countries not party that are supporting the United Nations or the African Union's efforts should not be placed in jeopardy. This resolution provides clear protections for United States persons. No United States person supporting the operations in the Sudan will be subject to investigation or prosecution because of this resolution.

That does not mean that there will be immunity for American citizens who act in violation of the law. We will continue to discipline our own people when appropriate.

Let me conclude by reminding everyone that the point of these three resolutions is to help the people of the Sudan. They have suffered through appalling civil conflicts that have resulted in untold suffering. We cannot bring justice to all the victims. What we can do is help the people of the Sudan turn a historic page and enjoy a much, much better future. This month's three Sudan resolutions are designed to help reach that goal.

Mr. Baali (Algeria) (*spoke in French*): Algeria reaffirms its firm condemnation of the grave violations of human rights and international humanitarian law committed in Darfur. It also expresses its sympathy for and solidarity with the victims of that tragedy. From the outbreak of the crisis, Algeria has been involved in the international community's efforts to end the suffering of the civilian population and to find a political solution. In that regard, Algeria has spared no effort to support the effective measures taken by the African Union and its Chairman, President Obasanjo, to stabilize the situation and help the parties to find a peaceful solution to that fratricidal conflict.

Algeria firmly believes that fighting impunity is a crucial element for the entrenchment of peace and stability. That need is all the more essential in the case of Darfur because the conflict, which has raged for several years, has damaged relations between the communities. The process of fighting impunity must therefore also aim at restoring harmonious relations between the populations of Darfur and serve the cause of peace.

From our point of view, all steps taken by the international community must seek four equally important objectives. First, they must bring to justice those guilty of crimes through credible, fair and transparent trials. Secondly, they must render justice to the victims by restoring their rights and by compensating them for the moral and material damages they have suffered. Thirdly, the steps taken must promote national reconciliation, a political settlement of the crisis and the strengthening of peace and stability throughout the Sudan. Finally, they must gain the Sudanese people's support for a process in which they are the most important concern and that ensures, in particular, the Government's cooperation, which is essential for bringing that process to completion.

Taking those considerations into account, Algeria believes that the African Union is best placed to take charge of that sensitive and delicate undertaking. We are convinced that the African Union can satisfy the requirements for peace without sacrificing the requirement of justice that we all owe the victims. For, while it is true that there can be no peace without justice, it is equally true that without peace, there will be no justice.

On behalf of the African Union, President Obasanjo made a proposal founded precisely on the desire to reconcile those two fundamental requirements, mindful that utmost prudence must be exercised when taking action. We regret that the members of the Council have declined to study that proposal in depth or to assess it in the light of the possibilities it offers for attaining our common objective of placing the fight against impunity in the service of the strengthening of peace and national reconciliation.

We also underline that one cannot claim to support the African Union and leave to it the task of proposing African solutions suited to the various types of crises the continent has experienced, only to brush aside its proposals to the Council without even deigning to consider them.

In that context, I wish to recall that when the situation in Darfur erupted, only the African Union dared to send soldiers to monitor the ceasefire and protect the civilian population, and that, in the face of a complex crisis, only the African Union was able to persuade the parties to engage in negotiations for a peaceful solution to the conflict.

What is true of the situation in the Sudan is true of all conflicts in Africa, where African heads of State, through often intense mediation, have been able to put an end to conflicts. And it is the African approach, based on justice and reconciliation, that has enabled communities that have ripped one another apart to make the effort, once justice has been served, to learn how to live together once again.

The resolution that has just been adopted took a different approach. My delegation had no choice but to abstain.

I wish to conclude my statement by expressing a regret. I regret that, out of a concern for compromise at all costs and at whatever price, those defending the principle of universal justice have in fact ensured that, in this domain, the use of double standards — of which some have accused the Council — and a two-track justice were most unexpectedly demonstrated.

Mr. Wang Guangya (China) (*spoke in Chinese*): The Chinese delegation abstained in the voting on the resolution. We have always closely followed the situation in the Darfur region of the Sudan and support efforts to reach an agreement on an early political settlement of the question of Darfur through the negotiations held under the auspices of the African Union. At the same time, like other members of the international community, we deeply deplore the gross violations of international humanitarian and human rights law in Darfur.

Undoubtedly, the perpetrators must be brought to justice. The question is: What is the most effective and feasible approach in this connection? In addressing the issue of impunity, we believe that, when trying to ensure justice, it is also necessary to make every effort to avoid any negative impact on the political negotiations on Darfur. When punishing the perpetrators, it is also necessary to promote national reconciliation. When trying to solve the question of Darfur, it is also necessary to sustain the hard-won results in the North-South peace process.

Based on that position and out of respect for national judicial sovereignty, we would prefer to see perpetrators of gross violations of human rights stand trial in the Sudanese judicial system. We have noted that the Sudanese judiciary has recently taken legal action against individuals involved. In order to ensure the justice, transparency and credibility of the trials, the international community could provide appropriate technical assistance and necessary monitoring. Of course, the African panel for criminal justice and reconciliation, proposed by Nigeria on behalf of the African Union, could also serve as a way out. We are not in favour of referring the question of Darfur to the International Criminal Court (ICC) without the consent of the Sudanese Government, because we are afraid that that would not only severely complicate efforts to secure an early settlement of the Darfur issue, but also have unforeseeable consequences for the north-south peace process in the Sudan.

It should also be pointed out that China is not a State party to the Rome Statute and has major reservations with regard to certain of its provisions. We cannot accept any exercise of the ICC's jurisdiction against the will of non-State parties, and we would find it difficult to endorse any Security Council authorization of such an exercise of jurisdiction by the ICC.

For those reasons, China had no alternative but to abstain on the draft resolution sponsored by the United Kingdom.

Ms. Løj (Denmark): It has been two months since the Security Council received the report of the International Commission of Inquiry regarding the ongoing atrocities in Darfur. The report strongly recommended the referral of the crimes in Darfur to the International Criminal Court (ICC). Throughout the Council's long negotiation process, Denmark has supported that recommendation. The ICC has the mandate, the capacity and the funding necessary to ensure swift and cost-effective prosecution. From that perspective, we are indeed very encouraged that the Council has just adopted a resolution that will bring an internationally recognized follow-up to the reported crimes in Darfur. Any further postponement of this issue would only have weakened confidence in the resolve of the Council.

Denmark recognizes the difficulties that some members have in accepting the compromise text before us. We appreciate the flexibility shown by all parties. Furthermore, Denmark was able to vote in favour of the resolution only after careful consideration of some of the formulations in the text. With regard to the language on exclusive jurisdiction, it is our interpretation that it does not affect the universal jurisdiction of Member States in areas such as war crimes, torture and terrorism. As regards the formulation regarding the existence of the agreements referred to in article 98, paragraph 2, of the Rome Statute, Denmark would like to stress that that reference is purely factual; it is merely referring to the existence of such agreements. Thus, the reference in no way impinges on the integrity of the Rome Statute.

That having been said, we believe that the resolution is a genuine and valid compromise leading to the very first referral of a situation to the ICC by the Security Council. Denmark thus looks forward to seeing the Court take the first important steps towards ending the culture of impunity in Darfur.

Mr. Baja (Philippines): This is the third resolution — the third child born of the Security Council's consideration of the situation in the Sudan, in particular Darfur. At this late hour — in the twilight of the Brazilian presidency — we cannot but recall a story that originated in Wales, the home of the sponsor of resolution 1593 (2005). There was a middle-aged couple who had two stunningly beautiful teenage daughters, but who decided to try one last time for the son they had always wanted. After months of trying, the wife became pregnant, and, sure enough, delivered a healthy baby boy nine months later. The happy father rushed to the nursery to see his new son. He took one look at him, but was horrified to find that he was the ugliest child he had ever seen. He went to his wife and said that there was no way that he could have fathered the child. "Look at the two beautiful daughters I fathered", he cried. Then he gave her a stern look, and asked, "Have you been fooling around?" The wife smiled sweetly and said, "Not this time".

We voted for resolution 1593 (2005) in response to the urgency and the gravity of the crimes which the Security Council and the international community are expected and obliged to address. This is a case of choosing between the unborn and an infant whose legitimacy is still being questioned. Any further impasse — any further inaction — on the part of the Council, two months after the report of the Commission of Inquiry, would have reduced this august body to a nadir of irrelevance with regard to ending impunity and responding to the protection of human rights and humanitarian law. It would have been a simple case of copping out.

We do, however, share the concerns of some delegations about the manner in which resolution 1593 (2005) was arrived at. Once again, fault lines in the Council and potential veto threats prevented the emergence of a strong, robust and clear signal from this body — which the Council badly needs these days. Perhaps that is the reason why the call for Security Council reform grows louder as the days go by.

We also believe that the International Criminal Court (ICC) may be a casualty of resolution 1593 (2005). Operative paragraph 6 of the resolution is killing its credibility — softly, perhaps, but killing it nevertheless. We may ask whether the Security Council has the prerogative to mandate the limitation of the jurisdiction of the ICC under the Rome Statute once the exercise of its jurisdiction has advanced. Operative paragraph 6 subtly subsumed the independence of the ICC into the political and diplomatic vagaries of the Security Council. Nevertheless, that eventuality may well be worth the sacrifice if impunity is, indeed, ended in Darfur; if human rights are, indeed, finally protected and promoted; and if, indeed, the rule of law there is upheld. Thus, we voted in favour of resolution 1593 (2005).

Mr. Oshima (Japan): My delegation voted in favour of the draft resolution proposed by the United

Kingdom because impunity for serious violations of human rights and crimes against humanity committed in Darfur must not be allowed, and because, in order to bring the perpetrators to justice, Japan supports, in principle, the referral of the case of Darfur to the International Criminal Court (ICC) within the appropriate time frame, although Japan is not a party to the Rome Statute. We wish to record our position, however, that we would have much preferred a Council decision on this matter to have been taken with broader agreement.

Nonetheless, we welcome the fact that, in a spirit of compromise and flexibility, a decision has been taken to address the important issue of impunity. Now that this resolution has been adopted, my Government expects the parties concerned to abide by it and to cooperate in its implementation to bring those responsible to justice.

Sir Emyr Jones Parry (United Kingdom): Tonight, by this vote, the Security Council has acted to ensure accountability for the grave crimes committed in Darfur, and I hope to send a salutary warning to anyone intending to commit any further such atrocities.

The United Kingdom welcomes the Council's decision to refer the situation to the International Criminal Court, which is for us the most efficient and effective means available to deal with impunity and to ensure justice for the people of Darfur.

Council members have deeply held differences of view on the issue of the International Criminal Court, which makes the agreement reached today all the more welcome and important. Our discussions have been characterized on all sides by a high degree of commitment and mutual comprehension, and a readiness to cooperate. This outcome will, we hope, serve as a basis for Council decisions on future such occasions and will as such create a durable and generally acceptable basis on which to proceed.

The Council must continue tackling the conflict in Darfur as part of an integrated strategy for dealing with the Sudan as a whole. We therefore welcome the recent adoption of the resolutions on the peace support operation and on measures. We must increase our support for the African Union mission, which is playing such an important role in Darfur. The Secretary-General's report, requested by the Council in resolution 1590 (2005), will be an important element in taking forward this vital agenda.

We must redouble our efforts to ensure safety, security, political progress and peace for the people of Darfur and for the Sudan as a whole. They have suffered enough. They deserve our continuing interest, our help and our support. We believe that the three resolutions that the Council has adopted in the last week constitute a substantial contribution to that end.

Mr. Mayoral (Argentina) (*spoke in Spanish*): The Argentine Republic voted in favour of this resolution on the basis of the report submitted to the Security Council by the High Commissioner for Human Rights, which stated clearly that serious violations of human rights and crimes against humanity had been committed and verified in Darfur.

The report stated that there was irrefutable evidence in that respect and that the legal context for dealing with such serious human rights violations was the International Criminal Court, through a referral by the Council to the Court's Prosecutor. Argentina also understands that the International Criminal Court is the proper forum for the international community as a whole to combat impunity wherever it might occur and to bring to justice those responsible for the most serious crimes.

We believe that this resolution allows us to provide strong support to the Court and constitutes a significant step within the United Nations towards ensuring the proper functioning of the international human rights system, for which the Court is, and must be, an essential tool.

We wish to highlight the fact that this is the first time that the Security Council, making use of article 13 of the Rome Statute, has referred to the Prosecutor a situation in which — according to the report, whose veracity we do not doubt — it appears that one or more types of crimes over which the Court has jurisdiction have been committed. We believe that this is undoubtedly a crucial precedent.

We believe that the letter and spirit of the Rome Statute must be respected and that the balance of its provisions must be preserved, taking into account the legitimate concerns of States without weakening in any way the powers of the Court. For that reason, we regret that we had to adopt a text that establishes an exception to the jurisdiction of the Court. It is our hope that this will not become standard practice.

We would like to make it clear that the exception provided for in paragraph 6 should be limited exclusively to those nationals or members of the armed forces of a State that is not party to the Rome Statute that are participating in peacekeeping operations established or authorized by the Security Council.

Finally, we wish to establish clearly that we are against any position or agreement which generically would exclude the nationals of a State from the jurisdiction of the Court, because that would affect the basis for such jurisdiction and thwart the letter and the spirit of the Rome Statute.

Mr. De La Sablière (France) (*spoke in French*): France has long been drawing the attention of the Security Council to the situation in Darfur. The events in that region of the Sudan are deeply troubling, and our greatest concern is for the plight of the people there. They are, as we all are aware, the primary victims of this conflict. Furthermore, and this is even more serious, they are its primary targets.

The reports that the Secretary-General has been submitting every month to the Council have provided a detailed picture of those atrocities. Entire villages are being attacked, plundered and destroyed, and their inhabitants are being brutalized, massacred and forcibly driven from their homes.

The Security Council therefore is in duty bound to take action. As we have continually reiterated, its policy must include three elements.

First, there is a need to assist the African Union in strengthening its monitoring and protection system. That is what our Council began to do by adopting resolution 1590 (2005) last week, and that is what we must continue to do speedily and with resolve.

There is also a need to continue to exert pressure on the warring parties to make them fulfil their obligations and to ensure that they arrive at a political settlement of the conflict. That is what our Council did several days ago by adopting resolution 1591 (2005).

Finally, there is a need to put an end to impunity. That was the Council's remaining task.

Alarmed by the magnitude of the atrocities perpetrated in Darfur, the Council had asked an International Commission of Inquiry to investigate the situation. The Commission's report, made public two months ago, confirms that mass violations of human rights and international humanitarian law have taken place. It denounces the crimes against humanity and the war crimes that have occurred. It recommends, given the circumstances, the referral of the situation to the International Criminal Court, which is the sole body with jurisdiction which can impartially, effectively and rapidly bring to trial those who bear major responsibility for those crimes.

The Secretary-General and the High Commissioner for Human Rights pressed the Council to urgently provide a favourable outcome following that recommendation. France, too, believed that referral to the International Criminal Court was the only solution — both because we believe that it is our duty to do right by the victims and because taking such action will prevent the violations from continuing. That is why France took the initiative on this problem and voted in favour of the resolution just adopted by the Council.

France welcomes the historic resolution that has just been adopted. For the first time, the Security Council has referred a situation to the International Criminal Court. Thus, it has sent a twofold and very forceful message not only to all those who have committed or might be tempted to commit atrocities in Darfur, but also to the victims: the international community will not allow those crimes to go unpunished.

The resolution also marks a turning point, for it sends the same message beyond Darfur to the perpetrators of crimes against humanity and war crimes, who until now have all too often escaped justice. The Security Council will remain vigilant to ensure that there is no impunity.

To achieve that result, my country was prepared to recognize — regarding the situation in Darfur and under certain conditions — a jurisdictional immunity vis-à-vis the International Criminal Court for certain nationals or personnel of States not parties to the Rome Statute. Here, I must emphasize that the jurisdictional immunity provided for in the text we have just adopted obviously cannot run counter to other international obligations of States and will be subject, where appropriate, to the interpretation of the courts of my country.

In conclusion, I should like to reaffirm France's confidence in the International Criminal Court and to express the hope that the suspicions — which we

believe to be unfounded — will soon fall away regarding that institution, the symbol of such hope for the victims of atrocities.

Mr. Vassilakis (Greece) (*spoke in French*): In the first three months of the year, the Security Council addressed the issue of the Sudan on several occasions. The collective wish of the Council was to see the implementation of the Naivasha Comprehensive Peace Agreement as swiftly as possible. We also succeeded in adopting the resolution establishing the United Nations force to monitor the implementation of the Agreement. In addition, the Security Council reached agreement with regard to the situation in Darfur. Thus, we adopted a resolution on specific measures that, we hope, will help to find a political solution in that region, which has suffered enough.

The last issue that the Security Council had to address was the violation of humanitarian law. It is the issue of impunity, which we must never allow to go unpunished. The issue of violations of humanitarian law is one to which my country attaches very great importance; that is why we are a party to the International Criminal Court. We would have preferred a resolution text without exceptions, but we were guided by our concern that it would be far more important to have a resolution that took into account certain differing views than to have no resolution at all and to allow violations of humanitarian law to go unpunished.

When we address issues in which moderation is given top priority, we achieve positive results. It is in that spirit that we voted in favour of the resolution. We believe that it strengthens the authority of the Security Council in its efforts to promote peace, security, international justice and law in all societies, particularly those in conflict. The resolution also strengthens the authority of the International Criminal Court, which will have the chance to prove itself and show what it can do.

The resolution creates certain exceptions for the specific case of the Sudan for countries not parties to the Statute of the International Criminal Court. That will create certain problems of interpretation regarding the application of the principle of exclusive international jurisdiction. In our view, the resolution does not infringe on that principle, which is firmly rooted in the Statute of the Court and in other international agreements. Despite that, we preferred to vote in favour rather than to allow violations of humanitarian law to go unpunished.

We are sure that the three resolutions adopted by the Security Council this month will help to restore peace in the Sudan and the prosperity of its people.

Mr. Mahiga (United Republic of Tanzania): The United Republic of Tanzania voted in favour of the resolution we have just adopted with considerable reservations. The human tragedy in Darfur is a matter of serious concern to us and to Africa, as it is to the international community. In that regard, in the interest of justice and accountability, we believe that further delay in reaching an agreement in the hope of a more desirable outcome would not serve the ends of justice or the aspirations of the people of Darfur to peace, justice and reconciliation. Regrettably, the delay in addressing those expectations has been the result of an undue focus on the mechanism at the expense of addressing urgently the plight of the people of Darfur.

We are relieved that the Council has ultimately taken action on the matter. Tanzania is a State party to the International Criminal Court — a Court established to bring to justice those accused of genocide and other serious crimes against humanity. We strongly believe that the Court is the most appropriate international organ for dealing with the situation in Darfur, as recommended by the Commission of Inquiry. However, we are concerned that the resolution also addresses other issues that are, in our view, extraneous to the imperative at hand. We are therefore unable to accept that the resolution should in any way be interpreted as seeking to circumvent the jurisdiction of the Court. In spite of those shortcomings, it is our hope that the resolution will assist in addressing the issue of impunity in Darfur.

We are gratified that the resolution provides for the possibility of conducting proceedings in Africa as a way of contributing to Africa's efforts to dispense justice and to fight impunity. We also welcome the fact that the resolution recognizes the proposal by Nigeria regarding the need to provide national healing and reconciliation in the Sudan, in cooperation with the African Union and the international community, as appropriate.

It is our hope that the international community will not fail the people of the Sudan as a whole and of Darfur in particular.

Mr. Motoc (Romania): I will be brief, not only because we are nearing exhaustion and the hour is late, but also because I feel there is little to add to a vote that speaks for itself in terms of the Council's ability to come together and find solutions to the most intricate matters submitted for its consideration — solutions that are in harmony with our peoples' expectations of a fairer, and hence safer, world at the dawn of the twenty-first century.

Romania deems the adoption of resolution 1593 (2005) at the very end — indeed, at the last minute — of a thoroughly successful Brazilian presidency for the month as a stand against impunity; as an expression of confidence in the ICC's ability effectively to handle complex cases like that which the Council has today referred to it; and as proof that our common resolve to bring an end to impunity in the Sudan and Darfur has ultimately proved stronger than the differences members might have. At the end of the day, what the Council said today is that there is no way, in our times, that anyone, anywhere in the world, can get away without just retribution for the commission of serious crimes.

Like my Greek colleague, we also hold it manifest that, by deciding to refer the case of reported crimes in Darfur to the ICC, the Security Council enhances its conflict prevention and resolution capabilities.

There are two things I consider it important to recall tonight. The first is the debt we owe to the Cassese Commission for making it possible for us to reach this point. The second is that upholding the ICC as we have, by adopting resolution 1593 (2005), will be to no avail unless we remain supportive of the Court as it exercises its prerogatives upon our referral.

Mr. Denisov (Russian Federation) (*spoke in Russian*): The members of the Security Council have frequently reaffirmed that the struggle against impunity is one of the most important elements of a long-term political settlement in Darfur and the Sudan as a whole. All who are guilty of gross violations of human rights in Darfur must be duly punished, as is rightly pointed out in the report of the International Commission of Inquiry.

We believe that the resolution adopted today by the Security Council will contribute to an effective solution in the fight against impunity in Darfur in the context of providing for the normalization and stability of the situation in that region of the Sudan.

Mr. Adechi (Benin) (*spoke in French*): The vote just taken by the Security Council is a major event in the context of the tireless efforts of the international community to promote the rule of law and to protect humanity against the terrible events witnessed in recent decades. The vote was also in keeping with action by the Council to find a solution to the lethal conflict under way in Darfur.

We regret the fact that the text we have adopted contains a provision of immunity from jurisdiction, which runs counter to the spirit of the Rome Statute.

However, Benin had four reasons for voting in favour of the resolution. First, Benin is party to the treaty establishing the International Criminal Court. Secondly, the ongoing deterioration of the situation in Darfur requires the Security Council to take urgent action to end violations against civilians there. One prerequisite of such action is to end the reign of impunity by providing impartial justice. Thirdly, referring the matter to the International Criminal Court ensures that credible and timely action will be taken against persons charged with atrocities and serious crimes. Fourthly, Benin voted in support of the resolution out of respect for human dignity and the right to life that has been denied to thousands of people in Darfur, to whom the international community owes protection in view of their vulnerability. That obligation has been recognized by the African Union in the Ezulwini Consensus adopted by its Executive Council, meeting in extraordinary session on 7 and 8 March this year. In the Ezulwini Consensus, the African Union recognizes the Security Council's right to exercise its international responsibility to protect a population when that population's Government either cannot or will not do so. The rendering of justice is an element of that obligation.

It is of the highest importance to provide reliable and fair justice that offers equal respect for the rights of victims and their victimizers. We can thereby help the people of the Sudan to achieve their legitimate dream of putting an end to the bloodthirsty conflict as soon as possible and to look to the future with serenity and hope. We can also thereby offer a good foundation for national reconciliation, because the national reconciliation we all wish to see in the Sudan can succeed only if impartial justice is done. In that

respect, we agree with the Commission of Inquiry that it will be up to the Sudanese parties themselves to decide, after broad consultations, on the appropriate mechanism to promote national reconciliation.

The President: I shall now make a statement in my capacity as representative of Brazil.

Brazil is in favour of the referral of the situation in Darfur to the International Criminal Court (ICC). Nevertheless, Brazil was not able to join those members that voted in favour of the resolution. We remain committed to bringing to justice those accused of the crimes mentioned in the report of the Commission of Inquiry, and in that sense we are ready to fully cooperate whenever necessary with the International Criminal Court.

The maintenance of international peace and the fight against impunity cannot be viewed as conflicting objectives. Brazil reiterates that the ICC provides all the necessary checks and balances to prevent possible abuses and politically motivated misuse of its jurisdiction. Thus, efforts to secure broader immunities from the jurisdiction of the Court are both unwarranted and unhelpful, in our view.

This is the first time the Council has approved a referral of criminal matters to the International Criminal Court, and that approval offers a rare opportunity for the Council to act promptly in one of the most important issues on the international agenda. However, from our point of view, the referral should not be approved at any cost. Brazil understands that there are limits to negotiating the approval of the referral within the Council, and they refer, first, to the responsibilities of the Council vis-à-vis an international instrument; secondly, to the integrity of the Rome Statute, which now has 98 ratifications; and thirdly, to the consistency of the position we have sustained since the negotiations on the Rome Statute. For those reasons, Brazil abstained in the voting on the resolution on the referral.

As recommended by the report of the International Commission of Inquiry, the ICC remains the only acceptable instance of criminal law for dealing with the issue of accountability in the Sudan. We have exhaustively negotiated a text that could better reflect both the concerns of countries non-parties to the Rome Statute, as well as the commitments of those countries that have ratified that instrument.

For the sake of the referral, Brazil painstakingly agreed during the negotiations upon provisions that presented a serious level of difficulty for my Government, such as the exemption from jurisdiction for nationals of those countries not parties to the Statute, even though — considering the need to approve the referral — Brazil acceded to such a limited immunity. To go further would constitute an inadequate and risky interference of the Council in the constitutional basis of an independent judicial body and a position inconsistent with the principles we have defended in the past on this issue. The text just approved contains a preambular paragraph through which the Council takes note of the existence of agreements referred to in article 98-2 of the Rome Statute. My delegation has difficulty in supporting a reference that not only does not favour the fight against impunity but also stresses a provision whose application has been a highly controversial issue. We understand that it would be a contradiction to mention, in the very text of a referral by the Council to the ICC, measures that limit the jurisdictional activity of the Court.

In addition, Brazil also was not in a position to support operative paragraph 6, through which the Council recognizes the existence of exclusive jurisdiction, a legal exception that is inconsistent in international law.

These are substantial issues that, in our view, will not contribute to strengthening the role of the ICC — which is our aspiration. Brazil has consistently rejected initiatives aimed at extending exemptions of certain categories of individuals from ICC jurisdiction, and we maintain our position to prevent efforts that may have the effect of dismantling the achievements reached in the field of international criminal justice. Both the acceleration and the format of negotiations during the last few days have prevented some delegations from balancing the clear objective of referral to the ICC against the hindrances imposed thereon. Insurmountable constraints thus prevented Brazil from voting in favour of a proposal that we have always understood would be the appropriate instrument to help curb violence and end impunity in Darfur.

I now resume my function as President of the Council.

I give the floor to the representative of the Sudan.

Mr. Erwa (Sudan) (*spoke in Arabic*): Once more the Council has persisted in adopting further unwise decisions against my country, which is rewarded for putting an end to the longest conflict in Africa with further sanctions and procedures, which only serve to further complicate the situation on the ground.

The world in its entirety knows full well that the differences that lasted for about two months within the Council over the question of accountability have nothing whatsoever to do with the achievement of stability in Darfur. The disagreement over the International Criminal Court (ICC) is long-standing and well known. There are resolutions regarding the ICC that have been stalled for years. Then the Darfur question came to be used in order to endorse this principle, which has been the subject of controversy for years — and not for the sake of justice. It is a paradox that the language used in bargaining over this resolution was the same language that buffeted the Council before, in another African question, and everyone knows that full well. Justice here is a great good used in the service of evil.

Moreover, the resolution just adopted is full of exceptions, in view of the fact that the State concerned with these exceptions is not party to the ICC. By the same token, we would like to remind the Council that the Sudan also is not party to the ICC. This makes the implementation of a resolution like this fraught with a series of procedural impediments and legitimate reservations as long as the Council believes that the scales of justice and law are based on exceptions and the exploitation of the crises of the developing countries and their affliction with conflicts and civil wars in the settlement of political positions and bargaining among major Powers. The fact remains that the Council today did not settle the question of accountability in Darfur. Rather, it exposed the fact that this Criminal Court was originally intended for developing and weak States, and that it is a tool for the exercise of the culture of superiority and to impose cultural superiority. It is a tool for those who believe that they have a monopoly on virtues on this world, rife with injustice and tyranny.

This august Council, by adopting this resolution, has once again ridden roughshod over the African position. The initiative by Nigeria, in its position as Chair of the African Union, was not even the subject of consideration, let alone the subject of interest, or of consultations — even brief consultations — to evaluate it; this while the African Union is present on the ground in Darfur, where it is playing a role whose effectiveness and efficiency were affirmed by the representative of this Organization in all of his reports. Moreover, this resolution was adopted at a time when the Sudanese judiciary has gone a long way in holding trials. This judiciary is capable and qualified and is resolved to uphold accountability and enforce verdicts, without exception.

We thank those countries that colonized us earlier and taught us laws. But some here wanted to activate the ICC and exploit the question of Darfur as a mere pretext, in spite of knowing that such exploitation of the issues of concern to people and profiting from crises and conflicts simply for political gain and bargaining has nothing to do with justice and humanity, let alone the preservation of international legitimacy and international peace and security, and other such slogans and titles.

Everyone knows that the question of accountability is a long and complicated process that cannot be concluded overnight. While the Council is keen on holding my country to account and to urge it to hold trials and achieve security and stability overnight, in a territory whose area approximates that of Iraq, we find that very same Council continuing to use the policy of double standards. The Council even goes so far as to affirm that exceptions are only for major Powers and that this Court is simply a stick used for weak States and that it is an extension of this Council of yours, which has always adopted resolutions and sanctions only against weak countries, while major Powers and those under their protection ride roughshod over the resolutions of this Council, cynically disregard them and consider them a dead letter.

We hear many expressions here such as "the accountability of the Council" and "confidence in the Council" from the members of this Council. Is there any credibility or confidence left in this Chamber? To the claim made by some that this resolution sends a message to all the parties that no one will now enjoy impunity, I would add — in order to avoid hypocrisy — "Except if he belongs to a certain category of States".

History is replete with examples of former empires that exercised hegemony and practised colonialism. This Organization was born out of the ruins of the empire of the Third Reich. Perhaps we are

witnessing a new age of hegemony in a new guise — and perhaps history will once again spawn a new international organization out of the ruins of a new empire.

In conclusion, I would like to reiterate — as I indicated in my previous statement — that such unwise resolutions contain provisions that make their implementation practically difficult. Such resolutions will only serve to weaken the prospects for settlement and further complicate an already complex situation.

The President: There are no further speakers inscribed on my list.

The Security Council has thus concluded the present stage of its consideration of the item on its agenda. The Council will remain seized of the matter.

The meeting rose at 11.55 p.m.